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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JAN 27 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

SOUTHEAST ENVIRONMENTAL TASK
FORCE; CALUMET ECOLOGICAL
PARK ASSOCIATION,

Plaintiffs,

v.

GEORGE W. BUSH, in his official
capacity as President of the United States
of America and STEPHEN JOHNSON,
in his official capacity as Administrator
of the United States Environmental
Protection Agency,

Defendants.

EPA Region 5 Records Ctr.



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JUDGE KENDALL

MAGISTRATE JUDGE COLE

COMPLAINT

The Southeast Environmental Task Force and the Calumet Ecological Park Association complain of Defendant George W. Bush, in his official capacity as President of the United States, and Defendant Stephen Johnson, in his official capacity as Administrator of the United States Environmental Protection Agency, as follows:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9601-9675. This Action seeks an order requiring Defendants George W. Bush, President of the United States ("the President"), and Stephen Johnson, Administrator of the Environmental Protection Agency ("the Administrator"), to fulfill a non-discretionary duty

pursuant to 42 U.S.C. §9605(d) by promptly evaluating hazardous substances in boat slips at the former United States Steel South Works (“USX”) factory and former Wisconsin Steel Works (“WSW”) factory according to the Hazard Ranking System detailed in 40 C.F.R. §300 apx. A. Where the President has failed to perform a 42 U.S.C. §9605(d) non-discretionary duty or act, any person may commence a civil action on his own behalf against the President and the Administrator pursuant to 42 U.S.C. §9659(a)(2).

Under 42 U.S.C. §9605(d), any person potentially affected by a release or threatened release of a hazardous substance may petition the President to conduct a Preliminary Assessment of the hazards to public health and the environment. If the Preliminary Assessment indicates that the release may pose a threat to human health or the environment, the President must promptly evaluate the site in accordance with the Hazard Ranking System referred to above. Preliminary Assessments of the USX and WSW boat slips, completed in December, 2000 and April, 2001 respectively, indicate that sediments in the boat slips contain significant levels of hazardous substances, and that these contaminants have migrated from the slips to the Calumet River and Calumet Harbor. The findings in the Preliminary Assessments of December, 2000 and April, 2001 triggered an obligation under 42 U.S.C. §9605(d) for the President and the Administrator to promptly evaluate the USX and WSW sites in accordance with the Hazard Ranking System. By not promptly evaluating these sites, the President and the Administrator have failed to fulfill a non-discretionary duty under CERCLA.

PARTIES

2. Plaintiff Southeast Environmental Task Force (“SETF”) is an Illinois non-profit, 26 U.S.C. §501(c)(3) community organization comprised of residents of Southeast Chicago and surrounding communities. SETF is committed to ensuring a healthful environment for those

living and working in and near Southeast Chicago. Many SETF members live in neighborhoods immediately adjacent to the boat slips at the former United States Steel South Works factory and former Wisconsin Steel Works factory.

3. Plaintiff Calumet Ecological Park Association (“CEPA”) is an Illinois non-profit, 26 U.S.C. §501(c)(3) organization comprised of residents of Southeast Chicago and nearby communities. CEPA seeks to ensure the viability of wildlife, flora, and fauna in Calumet region ecosystems, including lakefront areas, harbors, and waterways, through preserving and restoring the natural resources of the Calumet region, an area encompassing both the USX and WSW sites.

4. On June 19, 2000, SETF and CEPA petitioned the President to conduct a Preliminary Assessment of the USX and WSW boat slips pursuant to 42 U.S.C. §9605(d). More than four years have elapsed since the completion of the Preliminary Assessments and to date, the boat slips have not been evaluated in accordance with the Hazard Ranking System as required by 42 U.S.C. §9605(d). Plaintiffs are directly harmed by the President’s failure to evaluate promptly the boat slips at the USX and WSW sites.

5. The President’s failure to promptly evaluate the boat slips in accordance with the Hazard Ranking System impairs each Plaintiff’s ability to ensure residents of Southeast Chicago communities healthful environmental conditions in which to live, work, and recreate. SETF’s activities geared towards ensuring a safe and healthful environment for people living and working in Southeast Chicago are hindered by the President’s delay. CEPA’s efforts to ensure that Calumet region ecosystems can adequately sustain populations of wildlife, flora, and fauna are hindered by the President’s delay.

6. Plaintiffs are harmed because members of SETF and CEPA recreate and fish near the boat slips in the Calumet River and Calumet Harbor, bodies of water directly connected to

NOTICE

12. Pursuant to 42 U.S.C. § 9659(a)(2) and in compliance with 40 C.F.R. §§374 *et seq.*, in a May 13, 2005 Notice of Intent to Sue, Plaintiffs notified Defendants of their intent to file a lawsuit regarding the contaminated boat slip sediments at the United States Steel South Works and Wisconsin Steel Works sites. As required by 40 C.F.R. §374.2(a)(3), Plaintiffs sent notice by certified mail to the President of the United States, the Administrator of the U.S. EPA, the Region 5 Administrator of the U.S. EPA, the Administrator of Illinois Environmental Protection Agency, the Attorney General of the United States, and the Attorney General of Illinois. Notice was received by all parties no later than May 27, 2005.

13. Pursuant to 42 U.S.C. §9659(e) and 40 C.F.R. §374.2(c), a CERCLA citizen suit cannot be brought before the sixtieth day following the date on which notice is received. More than sixty days have passed since the Defendants received the Notice of Intent to File Suit. The Defendants have not taken any action to evaluate the USX and WSW boat slips as required by 42 U.S.C. §9605(d) and in compliance with the Hazard Ranking System detailed in 40 C.F.R. §300 apx. A. Upon information and belief, Defendants' failure to perform this non-discretionary duty will continue until ordered to do so by the Court.

COUNT I

14. The former United States Steel South Works factory is located at 3426 E. 89th Street, Chicago, Illinois 60617.

15. The former Wisconsin Steel Works factory is located at 2701 E. 106th Street, Chicago, Illinois 60617.

16. The USX site contains two boat slips which "were used to receive raw material and to transport finished steel products from the facility." (USX Preliminary Assessment, §1.1)

the slips which are used for recreational purposes and are designated as fisheries by the Illinois Department of Natural Resources.

7. Plaintiffs are harmed because members of SETF and CEPA live and work in the vicinity of the boat slips containing the contaminated sediments.

8. Defendant George W. Bush, in his official capacity as President of the United States, is responsible for functions vested in him by Congress under 42 U.S.C. §9605 and 42 U.S.C. §9659. Specifically, 42 U.S.C. §9605(d) vests in the President the responsibility of conducting Preliminary Assessments when duly petitioned and when necessary, promptly evaluating sites in accordance with the 40 C.F.R. §300 apx. A Hazard Ranking System.

9. Defendant Stephen Johnson, in his official capacity as Administrator of the Environmental Protection Agency (“USEPA”), is responsible for implementing the requirements and mandates of 42 U.S.C. §9605 and 42 U.S.C. §9659 as delegated to him by the President through Exec. Or. 12580, codified as 42 U.S.C. §9615.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. §9659(c) (CERCLA citizen suit provision) and 28 U.S.C. §1331 (federal question statute). The relief requested is authorized by 28 U.S.C. §§2201- 2202.

11. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. §1391(e)(2) because a substantial part of the property that is the subject of the action is located in this district. Specifically, the United States Steel South Works and the Wisconsin Steel Works properties are located in Cook County, Illinois. Venue is also proper in the Northern District of Illinois pursuant to 42 U.S.C. §9659(b)(2) (CERCLA citizen suit provision) and 42 U.S.C. §9613(b) (CERCLA venue provision).

25. The primary contaminants found in the USX slips are lead, copper, arsenic, cadmium, chromium, nickel, vanadium, and zinc.

26. Lead, copper, arsenic, cadmium, chromium, nickel, vanadium, and zinc are designated as hazardous substances by 40 C.F.R. §302.4 and 42 U.S.C. §9602.

27. The USX Preliminary Assessment report indicates that “contaminants have migrated from the vessel slips into the Calumet Harbor and Calumet River.” (USX Preliminary Assessment, §3.2)

28. The report states that “[a]s long as each vessel slip remains open to the adjacent Calumet River and Lake Michigan, a risk to the adjacent fishery and recreational area is probable.” (USX Preliminary Assessment, §3.2)

29. Analysis of contaminated sediments collected during the site assessment at the WSW boat slips revealed the presence of pesticides, semi-volatiles, and inorganic contaminants significantly exceeding the background contaminant level of sample sediments taken from a portion of the Calumet River unaffected by WSW operations.

30. The south WSW boat slip contains an estimated 32,592 cubic yards of contaminated material. (WSW Preliminary Assessment, §2.1)

31. The north WSW boat slip contains an estimated 10,000 cubic yards of contaminated material. (WSW Preliminary Assessment, §2.1)

32. Many of the pesticides, semi-volatiles, and inorganic compounds found in and around the WSW boat slips are designated as hazardous substances by 42 U.S.C. §9602 and 40 C.F.R. §302.4.

40. More than four years have elapsed since the completion of the Preliminary Assessments, and the U.S. EPA has not promptly evaluated the contaminants in the USX and WSW boat slips in accordance with the Hazard Ranking System as required by 42 U.S.C. §9605(d)

41. 42 U.S.C. § 9659 (a)(2) gives any person the authority to “commence a civil action on his own behalf . . . against the President or any other officer of the United States . . . where there is alleged a failure . . . to perform any act or duty . . . which is not discretionary.”

42. 42 U.S.C. §9659 (c) vests this court with the authority to “order the President or other officer to perform the act or duty concerned.”

33. The WSW Preliminary Assessment report states that contaminants found downstream have “been deposited as a result of contaminated sediments flowing from the vessel slips into the Calumet River.” (WSW Preliminary Assessment, §3.2)

34. The WSW Preliminary Assessment further states that “[w]ith the presence of these contaminants within the vessel slips, the potential remains for the migration of the sediments containing contamination to enter the Calumet River.” (WSW Preliminary Assessment, §3.2)

35. Barge and boat traffic in the south WSW vessel slip, present at the time the on-site inspection was completed in April, 2001, “may suspend the sediments allowing them . . . to migrate into the Calumet River.” (WSW Preliminary Assessment, §3.2)

36. In an October 23, 2001 letter to Plaintiff’s counsel, the U.S. EPA acknowledged that the sample results contained in the Preliminary Assessment report “justified further action.”

37. The President has a non-discretionary duty under 42 U.S.C. §9605(d) to “promptly evaluate” sites containing contaminants which “may pose a threat to human health or the environment . . . in accordance with the hazard ranking system . . . to determine the national priority of such release.”

38. The functions vested in the President by 42 U.S.C. §9605(d) are delegated to the Administrator of the U.S. EPA pursuant to Exec. Or. 12580, which is codified as 42 U.S.C. §9615.

39. The Hazard Ranking System, established by 42 U.S.C. §9605(a)(8)(A), requires the U.S. EPA to rank sites according to the procedures detailed in 40 C.F.R. part 300 apx. A to determine relative degree of risk posed to human health and the environment as accurately as is feasible using information from Preliminary Assessments and site inspections.